IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Criminal Appeal No.179-SB of 1995

Date of decision: 19.04. 2007

Chandgi Ram

-----Appellant.

Vs.

State of Haryana.

-----Respondent.

CORAM:- HON'BLE MR JUSTICE ADARSH KUMAR GOEL

Present: Mr. Hemant Bassi, Amicus Curiae
for the appellant.

Mr. P.S. Sullar, DAG, Haryana.

The appellant challenges his conviction under Sections 304-B and 498-A IPC. He has been sentenced to undergo RI for seven years under Section 304-B IPC and to undergo RI for two years and to pay fine of Rs.1,000/-, in default, to undergo further RI for nine months under Section 498-A IPC.

Both the sentences are to run concurrently.

Case of the prosecution is that Maya Rani daughter of Sultan (PW-4) was married to the appellant on 8.3.1989. She was subjected to harassment for dowry. When she visited her parental home after 4-5 days, she told her parents that the appellant and her in-laws were harassing her for not giving a scooter. When the appellant went to the house of his in-laws, to bring Maya Rani back,

he repeated the demand for the scooter. 15-20 days prior to the occurrence, Maya Rani was brought to her parents' house. On 31.8.1989, the appellant came to his in-laws house to take back Maya Rani and he again repeated his demand. He also stated that if the scooter was not given, it will not be good for them. He even declined to accept the customary gift of Rs.101/- from the mother of the deceased. On 2.9.1989, co-accused Motha came to the house of Sultan PW-4 and told him that Maya Rani had died.

PW-4 Sultan along with Moti Lal and Suraj Bhan went to Village Kalar Bhaini and found Maya Rani dead. She was taken to hospital at Hisar and was examined by Dr. Chhaju Ram, who was of the opinion that Maya Rani had been murdered. The dead body was then taken to Civil Hospital, Hisar where Dr. Navnit Kulshrestha (PW-1) alongwith other doctors conducted the post-mortem examination and it was opined that the death was not a natural death. On the statement of Sultan (Ex.PO), recorded by ASI Chander Bhan, FIR (Ex.PO/1) was formally registered by PW-7 Ram Mehar, ASI. PW-8 Chander Bhan, ASI conducted the investigation. He prepared inquest report, got post-mortem conducted, effected recoveries, arrested the accused and challaned the accused for trial.

The prosecution examined PW-1 Dr. Navnit Kulshrestha, PW-2 Norotam Kumar, Photographer, PW-3 Ishwar Dayal, ASI, who received the message from the hospital, PW-4 Sultan, father of the deceased, PW-5 Kanta Devi, mother of the deceased, PW-6 Kuldleep Singh, Inspector, who arrested the accused, PW-7 Ram Mehar, ASI,

who recorded the FIR, PW-8 Chander Bhan, ASI, who conducted the investigation and PW-9 Sadhu Ram, Draftsman.

The accused denied the prosecution allegations. The appellant stated that he was serving as a Compounder with Dr. Sangwan and was living separately from his uncle Motha Ram and his family. The deceased was not keeping well and sometimes used to vomit blood. She also used to write letters to him to get her treated. He brought her to Uklana where accused was working and she was treated by Dr. Sangwan. In the night, she developed severe pain in the stomach and vomited blood. He administered pain relieving injection of bralgan and rushed to call the doctor, but when he came back, she had died. He called his uncle and the villagers and brought her to Hisar. He also informed her father Sultan who also accompanied him to Village Kalar Bhaini. He was satisfied about the circumstances of the death. He had brought the dead body to Hisar for cremation but after coming to Hisar, he kept the dead body at their house and on instigation of neighbours, a false case was registered. Identifical stand was taken by co-accused.

After considering the evidence on record, the trial Court convicted and sentenced the appellant, but acquitted the co-accused.

I have heard learned counsel for the appellant and perused the record.

It is not disputed that Maya Rani died within six months of her marriage. Question for consideration is whether her death was in circumstances other than normal and whether soon before her death, she was subjected to harassment for dowry.

According to PW-1 Dr. Navnit Kulshrestha, Medical Officer, Civil Hospital, Hisar, a Board of three doctors was constituted on police request. No external mark of injury except one small injection or pin-prick mark over dorsum of left wrist over the vain covered with the clotted blood was seen. There was reddish blue discolouration of 1.5 cm with swelling in the direction of the vain. The teeth were clenched, tongue was found cyanosed and bitten at the tip with clotted blood. Dark red coloured froathy fluid was coming out from both the nostrils. There was swelling on the left side of neck and bluish and red cloches. On dissection, there was extra vessation of blood in the sub cutaneous tissue. On dissection of the trachea, the mucous membrance was congested and contained froathy dark coloured small amount of food. Both lungs were swollen oadametous and dark in colour. On dissection dark coloured froathy fluid was coming out. A piece of the left lung was sent for chemical analysis.

The cause of death was kept under observation subject to report of FSL. On 8.3.1990, after receipt of report of FSL (Ex.PD), the cause of death was declared as asphyxia, which could be result of obstruction to respiratory passage. It was not a case of natural death. Red colour froth was seen coming out from both the nostrils and death could be obstructing nostril and mouth by putting a pillow on the face. In cross-examination, it was admitted that considerable force was required to close mouth and nose of an adult female with the hands. There was no possibility of the strangulation. Asphyxia could also be caused if food material or blood went into the air passage, but in that case, there would be no vomiting. He admitted that asphyxia may be

present in death from epilepsy, tetanus or other such diseases. There was no injury on the inner side of lips. The witness also answered various questions about the causes of asphyxia.

PW-4 Sultan deposed that at the time of departure of Maya Rani, after marriage, the appellant was not happy with the dowry and stated that he had not been given scooter. Maya Rani also complained about this when she visited her matrimonial home immediately after the marriage. The appellant repeated the demand for dowry when he went to bring Maya Rani from her matrimonial home. On second occasion, 15-20 days before the death, when Maya Rani visited her parents house, she again stated about demand of dowry and when the appellant went to bring her back, also repeated his demand. He even refused to accept the customary gift of Rs.101/- on that ground. On learning about death of Maya Rani, he went to the village and learnt that she had been killed. He took the dead body to Hisar and got post-mortem examination conducted, after the report with the police. Version given by Sultan has also been corroborated by Kanta Devi (PW-5).

Contention raised on behalf of the appellant is that death was normal death and was not in circumstances other than normal. There was no external mark of injury and no poison was detected. Asphyxia as cause of death was not immediately mentioned at the time of post-mortem examination and was mentioned only after receipt of report of FSL. Smothering could not be inferred since there was no evidence of any struggle; Strangulation was not possible. Death could be on account of food material or blood going into the air passage at

the time of vomiting. The doctor inferred that there was no vomiting because food material was not found, which was wrong.

Reliance has been placed on Modi's Textbook of ***Medical Jurisprudence and Toxicology*** (Twenty-first edition) published by N.M. Tripathi Private Limited, ***Medical Jurisprudence*** (Chapter-28) by Dr. R.M. Jhala and Justice V.B. Raju published by Eastern Book Company and Lyon's ***Medical Jurisprudence & Texicology*** (11th edition) published by Delhi Law House.

Learned counsel for the State supported the conviction and sentence of the appellant.

As already observed, the death being within six months of the marriage, two questions remain to be decided:-

(i) Whether soon after her death the deceased was subjected to harassment for dowry? and

(ii) Whether death was in circumstances other than normal?

The evidence with regard to demand of dowry is quite categorical in the form of evidence of PW-4 Sultan and PW-5 Kanta Devi who are parents of the deceased. PW-4 Sultan deposed that at time of farewell of the marriage party, protest was lodged by the accused and his family members about the scooter having not been given. After 4-5 days, when the deceased visited her parental home, she narrated that on account of scooter having not been given she was subjected to harassment. The accused came to escort the deceased to his house and repeated the demand of scooter. Again 15-20 days prior to the death, when the deceased visited her parents'

house, she again narrated the harassment on account of demand of dowry. On 31.8.1989 i.e. two days prior to death of the deceased, the accused, on his visit to the house of the parents of the deceased again raised his demand. He even declined to accept the traditional present of Rs.101/-. This version was given by PW-4 Sultan in his statement to the police Ex. PO. There is no improvement or contradiction or any other infirmity in the version given by him. The same is corroborated by his wife PW-5 Smt. Kanta Devi. Learned counsel for the appellant has not been able to show any reason as to why their testimony should disregarded. Though uncle and aunt of the appellant who were also co-accused and have been acquitted in absence of clear evidence against them, their acquittal does not affect the case of the prosecution against the appellant who is the husband of the deceased and it cannot be contended that considerations which have been applied to his relatives who may not have any direct interest in demanding dowry, will apply to the case of the appellant. In a tradition and custom bound Indian society, harassment suffered by a woman in matrimonial home may not be known to anyone else except parents or very close relatives of the woman. Any corroboration of testimony of parents of a deceased girl cannot be expected from other sources. Reference may be made to the law laid down by the Hon'ble Supreme Court in ***State of Karnataka v. K. Gopalakrishna*** AIR 2005 SC 1014 (paras 11 and 12) and ***Randhir Singh v. State of Punjab*** AIR 2004 SC 5097 (para 9).

In view of above, it stands established on record that the deceased was harassed on account of dowry soon before her death.

Only other question which remains to be decided is whether the death of the deceased was natural or otherwise.

The evidence of Dr. Navnit Kulshrestha, Medical Officer, Civil Hospital, Hisar (PW-1) has already been noticed above. He conducted the post-mortem examination on 3.9.1989 at 5.30 P.M. The cause of death, kept under observation initially, was mentioned as asphyxia, as a result of obstruction of respiratory passage vide opinion Ex.PE. Probable time between injury and death was opined to be within 24 hours. According to PW-4 Sultan, he had come to know about the death at 2 A.M. in the night on 3.9.1989. According to the suggestion given to him in cross-examination, he was informed by the accused Motha Ram about the death at 11 P.M. According to PW-8 Chander Bhan, ASI, message was received from the hospital at 12-30 P.M. Statement of PW-4 Sultan was recorded by the police at 4.00 P.M. PW-1, the doctor, further stated that cause of death was kept under observation as it was established that death could be either on account of poison or asphyxia.

In cross-examination, the doctor stated that since vein was seen pricked at the time of post-mortem, the viscera was sent for chemical examination to find out the contents which may have been injected in the body of the deceased. In absence of injuries, it could be inferred that it may not be a case of smothering by hands. It was explained that though asphyxia may be caused on account of blocking of air passage during vomiting, but in absence of food material in the trachea, there was no vomiting.

Contention on behalf of the appellant is that the asphyxia may have been caused on account of vomiting and since the teeth were found to clenched, vomiting could be inferred. Inference of the doctor that there was no vomiting on account of food material not being found in the stomach, was erroneous as in examination-in-chief, the doctor mentioned that the stomach had semi-digested food.

Counsel for the appellant relied upon the following passage from Modi's Textbook of ***Medical Jurisprudence and Toxicology*** *(supra)* at page 204 and 206:-

> "Vomited matter may regurgitate into the larynx, and by inspiratory efforts may be aspirated into the smaller bronchi and may cause suffocation. This is especially common in acute alcoholism, and occasionally occurs during a fit of epilepsy or in a case of badly administered anaesthesia. It must be remembered that the contents of the stomach fall into the larynx and trachea after death owing t pressure of the gases of decomposition, but they cannot reach the smaller bronchi".
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> "In Homicidal smothering effected by the forcible application of the hand over the mouth and mostrils, bruises and abrasions are often found on the lips and angles of the mouth, and alongside the nostrils..."
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> "...The lips are livid, and the tongue sometimes protruded. Bloody froth comes out of the mouth and nostrils. The skin shows punctiform ecchymoses with lividity of the limbs. Rupture of the tympanum may occur from a violent effort at respiration."

Reliance has been placed on ***Medical Jurisprudence*** by Dr. R.M. Jhala and Justice V.B. Raju at page 248 to the following effect:-

> "…. In cases where there is external violence, flattening of the nose, abrasion of nose, lips and face is present. In case where sustained pressure is the case, the face appears pale-specially in region of pressure."
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> xx xx xx xx xx
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> "The trachea shows signs of irritation (in case of irritant gases, etc.) congestion usually, frothy fluid and sometimes foreign body (when latter is the cause for suffocation)."
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> xx xx xx xx xx
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> "In adults homicidal suffocation is not possible except in presence of overpowering force (that two with marks of violence because of resistance offered), gross disability, evidence of intoxication with drug or alcohol, as with strangulation it is very difficult to suffocate an adult healthy person in full senses. Absence of marks of violence or other supporting circumstances (Intoxication, Infirmity, etc.) offer important negative points against conclusion of homicide. In absence of marks of violence, the medical evidence has its limitation in judging the nature of suffocation. It can be judged form circumstantial evidence only. The medical evidence in such cases has only corroborative importance."

In Lyon's ***Medical Jurisprudence & Texicology***, reliance has been placed on observations made at page 974 to the following effect:-

"**I. Was Death due to Suffocation?:** The chief points bearing on this question are:-

(1) Well-marked signs of asphyxia may sometimes be nearly absent, and yet death may have been caused by suffocation.

(2) The signs of asphyxia may be present, and those of drowning, hanging, and strangulation absent, and yet death may not have been the result of suffocation by violence, but may have been due to asphyxia of disease, or poison, e.g. epilepsy, tetanus, or strychnine poisoning. Hence, in cases or alleged suffocation by violence, much depends on the presence or absence of signs indicating the employment of violence, such as would produce suffocation. If these are absent, no positive opinion might be given, from the post-mortem examination alone, as to the cause of death.

(3) Tardieu's spots. – The fact that these are numerous, well defined and limited in size, does not contra-indicate strangulation and indicate suffocation to be the cause of death. Their presence might be consistent with death from causes other than suffocation. They have been met with in the bodies of adults after death from drowning, hanging, strangulation, heart disease, paralysis, pneumonia and relapsing fever. They are almost the rule in plague. They are also found in the bodies of stillborn, and even unborn, infants. Further, their absence does not, at any rate in the case of adults, conclusively contra-indicate suffocation."

From the above, it can at best be said that asphyxia may be caused accidentally or in absence of any external injury or other evidence, smothering may not have been done by hand but it cannot be concluded that the death was under natural circumstances. The

doctor specifically denied the suggestion that asphyxia may have been caused by food material or blood going into the air passage by stating "but in this case, there was no vomitous because food material was not found in the trachea"

In Modi's Textbook of ***Medical Jurisprudence and Toxicology*** *(supra)*, asphyxia on account of vomiting has been mentioned as only one of the possibilities mostly in the case of acute alcoholism, epilepsy or badly administered anaesthesia.

In Dr. R.M. Jhala's ***Medical Jurisprudence*** (*supra)*, it is mentioned that suffocation of adult healthy person was difficult and there will be external marks of violence.

In Lyon's ***Medical Jurisprudence & Texicology*** *(supra)*, it is mentioned that marks of asphyxia absent and yet death may be on account of suffocation.

Observations relied upon do not advance the case of the appellant. It has been established that the appellant was harassing the deceased on account of dowry. The deceased was a female and the appellant who was in her exclusive company in the night was definitely in a position to strangulate her, even without leaving any mark. The observations in textbooks relied upon by learned counsel for the appellant do not negative the opinion of Dr. Kulshrestha (PW-1) that in the present case, the death was not natural.

In the context of the submission that the said witness did not deny the possibility of asphyxia taking place accidentally on account of food material going into the air passage, it may be noted

that medical opinion of a mere possibility cannot be enough to negative the prosecution's case.

In ***Mani Ram v. State of Rajasthan*** AIR 1993 SC 2453, it was observed:-

> "...medical evidence is only an evidence of opinion and is hardly decisive...."

In ***Solanki Chimanbhai Ukabhai v. State of Gujarat*** AIR 1983 SC 484, it was observed:-

> "12. Ordinarily, the value of medical evidence is only corroborative. It proves that the injuries could have been caused in the manner alleged and nothing more. The use which the defence can make of the medical evidence is to prove that the injuries could not possibly have been caused in the manner alleged and thereby discredit the eye witnesses...."

In ***State of U.P. v. Krishna Gopal*** AIR 1988 SC 2154, it was observed:-

> "13. ...It is trite that where the eye-witnesses' account is found credible and trustworthy, medical opinion pointing to alternative possibilities is not accepted as conclusive...."

For the above reasons, it has to be held that the death of the deceased took place in circumstances other than normal.

Thus, the case of the prosecution against the appellant stands fully established beyond reasonable doubt. The sentence awarded is minimum.

The conviction and sentence of the appellant are, thus, affirmed.

The appeal is dismissed.

April 19, 2007 (**ADARSH KUMAR GOEL)**
ashwani **JUDGE**